

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARTHA BERNDT, et al.,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

NO. C03-3174 TEH

ORDER OF RECUSAL

On December 22, 2009, this Court invited the parties to file any objections or concerns regarding the Court's continued involvement in this case given that one of the named defendants, Dwight Winslow, now serves as Statewide Medical Director under the supervision of the Receiver appointed by the Court in *Plata v. Schwarzenegger*, Case No. C01-1351 TEH.¹ Because the only claims against Dr. Winslow were asserted by now-deceased Plaintiff Judy Longo, the Court also ordered Plaintiffs to file a statement indicating whether they intended to proceed with Ms. Longo's claims following her death.

In response to the Court's order, Plaintiffs notified the Court that they intended to proceed with Ms. Longo's claims and intended to file a motion for substitution pursuant to Federal Rule of Civil Procedure 25(a)(1). Defendants filed a statement that they believed it would be appropriate for the Court to transfer this case.

¹The Court discovered this potential conflict when it began reviewing the parties' briefs on Plaintiffs' motion for class certification. The Court subsequently reviewed the docket in this case and determined that no substantive rulings were issued after the appointment of the first *Plata* Receiver on February 14, 2006.

1 After careful consideration, the Court agrees with Defendants. Although the Court
2 remains "satisfied that Dr. Winslow's current employment has played and [would] play no
3 role in any decisions in this case," Dec. 22, 2009 Order at 1, the Court is also cognizant of
4 judicial ethical rules that caution against even the appearance of impropriety or
5 circumstances in which a judge's impartiality might reasonably be questioned. Accordingly,
6 the Court finds it appropriate to recuse from this matter and to request reassignment under
7 section (E)(2) of the Assignment Plan of this Court.

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9 **IT IS SO ORDERED.**

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11 Dated: 01/13/10



12 THELTON E. HENDERSON, JUDGE
13 UNITED STATES DISTRICT COURT
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